

SENATE BILL No. 244

March 9, 1989, Introduced by Senators DI NELLO, WELBORN, ARTHURHUTLZ and GEAKE and referred to the Committee on Criminal Justice and Urban Affairs.

A bill to amend section 7521 of Act No. 368 of the Public Acts of 1978, entitled as amended
"Public health code,"
as amended by Act No. 139 of the Public Acts of 1988, being section 333.7521 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 7521 of Act No. 368 of the Public Acts
2 of 1978, as amended by Act No. 139 of the Public Acts of 1988,
3 being section 333.7521 of the Michigan Compiled Laws, is amended
4 to read as follows:

5 Sec. 7521. (1) The following property is subject to
6 forfeiture:

7 (a) A prescription form, official prescription form,
8 controlled substance, an imitation controlled substance, or a
9 controlled substance analogue ~~which~~ THAT has been manufactured,

1 distributed, dispensed, used, possessed, or acquired in violation
2 of this article.

3 (b) A raw material, product, or equipment of any kind
4 ~~which~~ THAT is used, or intended for use, in manufacturing, com-
5 pounding, processing, delivering, importing, or exporting a con-
6 trolled substance or a controlled substance analogue in violation
7 of this article; or a raw material, product, or equipment of any
8 kind ~~which~~ THAT is intended for use in manufacturing, compound-
9 ing, processing, delivering, importing, or exporting an imitation
10 controlled substance in violation of section 7341.

11 (c) Property ~~which~~ THAT is used, or intended for use, as a
12 container for property described in subdivision (a) or (b).

13 (d) A conveyance, including an aircraft, vehicle, or vessel
14 used, or intended for use, to transport, or in any manner to
15 facilitate the transportation, for the purpose of sale or receipt
16 of property described in subdivision (a) or (b), ~~but~~ EXCEPT AS
17 FOLLOWS:

18 (i) A conveyance used by a person as a common carrier in the
19 transaction of business as a common carrier is not subject to
20 forfeiture unless it appears that the owner or other person in
21 charge of the conveyance is a consenting party or privy to a vio-
22 lation of this article.

23 (ii) A conveyance is not subject to forfeiture by reason of
24 any act or omission established by the owner ~~thereof~~ OF THE
25 CONVEYANCE to have ~~been committed or omitted~~ OCCURRED without
26 the owner's knowledge or consent.

1 (iii) A conveyance is not subject to forfeiture for a
2 violation of section 7403(2)(c) or (d), section 7404, or
3 section 7341(4).

4 (iv) A forfeiture of a conveyance encumbered by a bona fide
5 security interest is subject to the interest of the secured party
6 who neither had knowledge of nor consented to the act or
7 omission.

8 (e) Books, records, and research products and materials,
9 including formulas, microfilm, tapes, and data used, or intended
10 for use, in violation of this article.

11 (f) Any thing of value that is furnished or intended to be
12 furnished in exchange for a controlled substance or an imitation
13 controlled substance in violation of this article, traceable to
14 an exchange for a controlled substance or an imitation controlled
15 substance in violation of this article, or used or intended to be
16 used to facilitate any violation of this article including but
17 not limited to money, negotiable instruments, or securities. To
18 the extent of the interest of an owner, a thing of value is not
19 subject to forfeiture under this subdivision by reason of any act
20 or omission that is established by the owner of the item to have
21 ~~been committed or omitted~~ OCCURRED without the owner's knowl-
22 edge or consent. Any money that is found in close proximity to
23 any property that is subject to forfeiture under subdivision (a),
24 (b), (c), (d), or (e) shall be presumed to be subject to forfei-
25 ture under this subdivision. This presumption may be rebutted by
26 clear and convincing evidence.

1 (g) Any other drug paraphernalia not described in
2 subdivision (b) or (c).

3 (H) REAL PROPERTY, INCLUDING ANY RIGHT, TITLE, OR INTEREST
4 IN THE WHOLE OF ANY LOT OR TRACT OF LAND AND ANY APPURTENANCES OR
5 IMPROVEMENTS, THAT IS USED, OR INTENDED TO BE USED, IN ANY MANNER
6 OR PART, TO COMMIT, OR TO FACILITATE THE COMMISSION OF, A VIOLA-
7 TION OF THIS ARTICLE PUNISHABLE BY IMPRISONMENT FOR MORE THAN 1
8 YEAR. HOWEVER, REAL PROPERTY SHALL NOT BE FORFEITED UNDER THIS
9 SUBDIVISION TO THE EXTENT OF THE INTEREST OF AN OWNER OF THE REAL
10 PROPERTY, BY REASON OF AN ACT OR OMISSION THAT IS SHOWN BY THE
11 OWNER TO HAVE OCCURRED WITHOUT THAT OWNER'S KNOWLEDGE OR CONSENT.

12 (2) A FORFEITURE OF REAL OR PERSONAL PROPERTY ENCUMBERED BY
13 A SECURITY INTEREST OR ANY OTHER INTEREST THAT SECURES PAYMENT OR
14 PERFORMANCE OF AN OBLIGATION IS SUBJECT TO THE INTEREST OF THE
15 SECURED PARTY OR THE PARTY WITH THE OTHER INTEREST IN THE REAL OR
16 PERSONAL PROPERTY THAT SECURES PAYMENT OR PERFORMANCE OF THE
17 OBLIGATION IF THE PARTY NEITHER HAD PRIOR KNOWLEDGE OF NOR CON-
18 SENTED TO THE ACT OR OMISSION.

19 (3) IN ADDITION TO THE PROHIBITION AGAINST THE FORFEITURE OF
20 CERTAIN REAL PROPERTY CONTAINED IN SUBSECTION (1)(H), REAL PROP-
21 ERTY SHALL NOT BE FORFEITED UNDER SUBSECTION (1)(H) IF THE OWNER
22 OF THE REAL PROPERTY KNOWS OR HAS REASONABLE CAUSE TO BELIEVE
23 THAT A VIOLATION OF THIS ARTICLE HAS TAKEN PLACE UPON THE REAL
24 PROPERTY AND DOES BOTH OF THE FOLLOWING:

25 (A) NOTIFIES A LAW ENFORCEMENT AGENCY IN WRITING OF THE VIO-
26 LATION OR SUSPECTED VIOLATION OF THIS ARTICLE.

1 (B) SERVES A NOTICE TO QUIT UPON THE INDIVIDUAL WHO THE
2 OWNER KNOWS OR HAS REASONABLE CAUSE TO BELIEVE HAS COMMITTED A
3 VIOLATION OF THIS ARTICLE.

4 (4) ~~-(2)-~~ As used in this section, "imitation controlled
5 substance" means an imitation controlled substance as defined in
6 section 7341.